

VZCZCXRO6434

RR RUEHAG RUEHAST RUEHDA RUEHDBU RUEHDF RUEHFL RUEHIK RUEHKW RUEHLA
RUEHLN RUEHLZ RUEHPOD RUEHROV RUEHSR RUEHVK RUEHYG
DE RUEHSQ #0872/01 3061154
ZNR UUUUU ZZH
R 021154Z NOV 07
FM AMEMBASSY SKOPJE
TO RUEHC/SECSTATE WASHDC 6667
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE 0072
RUEAIIA/CIA WASHINGTON DC
RHMFIUU/CDR TF FALCON
RUEKDIA/DIA WASHINGTON DC
RUEKJCS/JOINT STAFF WASHINGTON DC
RUEKJCS/SECDEF WASHINGTON DC
RUESEN/SKOPJE BETA
RUEHSQ/USDAO SKOPJE MK
RHEHNSC/WHITE HOUSE NATIONAL SECURITY COUNCIL

UNCLAS SECTION 01 OF 02 SKOPJE 000872

SIPDIS

SENSITIVE
SIPDIS

STATE FOR EUR/SCE

E.O. 12958: N/A

TAGS: [PGOV](#) [PREL](#) [SCUL](#) [MK](#)

SUBJECT: MACEDONIA: RAISING THE RED FLAG? ALBANIANS REACT
TO CONSTITUTIONAL COURT DECISION

REF: 2005 SKOPJE 905

SUMMARY

¶1. (SBU) Ethnic Albanian parties have reacted with a firestorm of criticism of the Constitutional Court's October 24 decision annulling some provisions of the 2005 Law on Flags and Symbols, the final legislative piece of the Framework Agreement (FWA) which allowed eAlbanian-dominated municipalities to fly the Albanian flag (as a symbol of their ethnic community) next to the state flag of Macedonia. Opposition DUI decried the decision as undermining the FWA, while governing coalition partner DPA pledged to submit a new law on flags. Ethnic Albanian mayors vowed they would not implement the decision, and two eAlbanian Constitutional Court judges, including the President of the Court, resigned after the decision was issued. The government is waiting for the decision to enter into force before deciding how to proceed with implementation, but has confirmed our view that the ruling does not unduly restrict eAlbanians' right to fly their national flag in municipalities, and that it extends that right to other minorities as well. End summary.

ALBANIANS REACT HARSHLY TO COURT DECISION ON LAW ON FLAGS

¶2. (SBU) Macedonia's Constitutional Court published a decision October 24 annulling several provisions of the 2005 Law on the Use of Flags and Symbols, sparking outrage and harsh condemnations from ethnic Albanian parties DUI (opposition) and DPA (governing coalition). DUI harshly criticized the decision, which limits in some circumstances the conditions under which ethnic flags can be flown. DPA called the decision "tragicomic" and -- in a flash of the truly absurd -- blamed the decision on DUI, despite the fact that the DUI-affiliated judge on the Court had voted against the decision. In the same breath, however, DPA President Thaci pledged to compile a new law on flags and symbols that would "harmonize the interests of Albanians, Macedonians, and state interests."

¶3. (SBU) In a meeting with the Ambassador November 1, DUI President Ali Ahmeti characterized the ruling as a "political decision" which had damaged the Framework Agreement (FWA). He argued that the court's majority vote on the ruling had been divided along ethnic lines, and that the decision should have been voted instead with a qualified, or Badinter,

majority. NOTE: While the Flag Law was passed with a Badinter majority in July 2005, completing the last legislative requirement of the FWA (reftel), there is nothing in the Constitution or in the FWA that suggests judicial review of such legislation requires a Badinter vote by Constitutional Court judges. END NOTE.

ETHNIC ALBANIAN MAYORS UP IN ARMS

¶4. (SBU) Despite the fact that some eAlbanian municipalities that were previously precluded from flying the Albanian flag in front of public buildings can now do so because the right has been extended to all ethnic communities, ethnic Albanian mayors in more than a dozen municipalities vowed they would not comply with the decision. Most eAlbanian commentators and analysts were convinced that the ruling would prohibit the flying of the Albanian flag at the local level, although the decision clearly allows it to be flown in all but a few limited instances.

TWO JUDGES RESIGN, OPENING THE WINDOW FOR GOM COURT-PACKING

¶5. (SBU) In a reaction to the eAlbanian uproar, two of the Constitutional Court judges resigned, including the DUI-affiliated president of the court and an eAlbanian judge formerly affiliated with DPA. Both judges complained that the decision had not been adopted by a Badinter vote. According to DUI VP Arifi, the party had tried to persuade both judges to remain on the court, fearing that their departure would open a window of opportunity for the government to "pack the court" as it replaced the judges. In fact, the remaining members of the court moved quickly to replace the president, voting by a 2/3 majority to elect Trendafil Ivanovski. The two vacant seats remain empty, but

SKOPJE 00000872 002 OF 002

the government is likely to push for them to be quickly filled.

WHAT'S RIGHT ABOUT THE DECISION?

¶6. (SBU) In fact, the Constitutional Court in its ruling extended the right to fly ethnic flags to all minority communities in a given municipality (rather than just the "community in the majority", as written in the 2005 law). It also reaffirmed the right of ethnic Albanians to fly the state flag of Albania (red background with black double-headed eagle) as their ethnic flag. In addition, the court dismissed a 2005 appeal by the center-right nationalist VMRO-NP party to ban the use of the Albanian flag as incompatible with the state's sovereignty.

GOVERNMENT BIDDING TIME ON IMPLEMENTATION

¶7. (SBU) So far the government is biding its time before it announces steps to implement the decision. The court ruling first must be entered in the Official Gazette for a period of seven days, after which it enters into force. The Justice Ministry then drafts implementing language, a process which could take weeks or months. In discussions of the ruling the week of October 29, both PM Gruevski's Chief of Staff and Constitutional Court Judge Mirjana Trajkovska confirmed our interpretation that minorities would still be able to fly their ethnic flags, except in certain circumstances. The PM's Chief of Staff added that the GOM would approach implementation of the decision cautiously, with enforcement occurring on a case-by-case basis.

COMMENT: MUCH ADO....

¶8. (SBU) The Constitutional Court ruling, in our view, does not undermine the FWA. Article 7 of the FWA gives local authorities the right to "place in front of public buildings emblems marking the identity of the community in the majority of the municipality, respecting international rules and usages." The 2005 law went well beyond this language in

extending the right to fly the flag in venues other than public buildings, to include flying it inside those buildings. The court's decision further extends this right to minority communities not/not in the majority. The decision also draws on the Macedonian Constitution, the Vienna Convention on Consular Relations, and common practice in Croatia and Slovenia, among other countries, in its legal arguments. As such, the ruling appears to have been driven more by legal principles than by political bias. That said, the Albanian flag, along with the Albanian language, occupies a special place among ethnic Albanians in Macedonia. Implementation of even this legitimate judicial decision will demand sensitivity from all authorities.

MILOVANOVIC